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**In the  
Supreme Court of the United States**

Supreme Court, U. S.

**FILED**

**MAY 5 1979**

**STANLEY A. HALPIN, JR., CLERK**

OCTOBER TERM, 1978

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NO. 78 - 1263

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EAST CARROLL PARISH POLICE JURY, et al.,  
Petitioners,

versus

STEWART MARSHALL,  
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSO-  
CIATE JUSTICES OF THE SUPREME COURT OF THE  
UNITED STATES:

Respondent prays that this Court deny the Petition for  
Writ of Certiorari sought by Petitioners to review the deci-  
sion of the United States Court of Appeals for the Fifth  
Circuit, rendered on October 5, 1978.

QUESTIONS PRESENTED

1. Whether this case is moot due to the subsequent actions  
of the District Court.
2. Whether the Court of Appeals clearly erred in finding  
that the District Court's plan was remedially inappropriate in

that it employed a simplistic and mechanistic "fairness standard" which artificially minimize the voting strength of black citizens by the use of contorted lines.

### STATEMENT OF THE CASE

In earlier rounds of litigation in this case the Court of Appeals, *en banc*, held that at large-elections in East Carroll Parish violated the constitution. *Zimmer v. McKeithen*, 485 F.2d 1297 (1973), this Court affirmed on alternative non-constitutional grounds that single member districts were to be preferred absent exceptions circumstances. *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976), on remand the District Court selected as a remedy a plan drawn by E. Kenneth Selle and supported by the Defendants. Selle justified the contorted lines of his plan as necessary to meet his crude "fairness standard" which called for four black majority districts and five white majority districts. The United States Court of Appeals in its October 25, 1978, judgment which Petitioners would have this Court review, reversed the District Court and remanded the case for application of a remedy which avoided dilution of black voting strength and which was not based upon the mechanistic "fairness standard". The Defendants sought stays which were denied by the Court of Appeals and by this Court. Accordingly, the District Court called for a submission of proposed re-districting plans from the parties and further appointed Kenneth Selle as Special Master to again devised a plan for the Court. The District Court conducted a hearing on March 1, 1979, and by order of the same day directed the implementation of a nine single member district court devised plan. Elections under that plan are scheduled for the regular time set by state law for conducting police jury elections. Those elections will be commenced in 1979 on

August 6th with the opening of qualifications.

Also, since the filing of the petition for Writ of Certiorari herein, the parties have compromised and settled for a slightly reduced amount the attorneys fee claimed for which Petitioners had originally sought review. The attorneys fee issue is now moot by virtue of this settlement.

### REASONS FOR DENYING THE WRIT

#### I. *The Case is now Moot by Virtue of Subsequent Action in the District Court.*

After the Fifth Circuit and this Court denied stays in the instant case a hearing was conducted in the District Court on March 1, 1979. At the close of that hearing the District Court substituted a nine single member district plan based upon population as its remedy in the instant case. Elections are to be conducted under that plan at the regularly scheduled time for conducting police jury elections, which will commence with the opening of qualifications for office on August 6, 1979. Since the District Court has now changed its remedy there would be no practical consequences of this Court reviewing the original remedy of the District Court. Also, as indicated above the parties have settled and compromised the attorney fee claim for an amount slightly less than that claimed and this issue is moot by virtue of that settlement. Thus, the issues of this case are both stale and moot and for these reasons alone the Writ should be denied.

#### II. *The Case does not Present Issues of a Magnitude Worthy of Review by Certiorari.*

If not stale and moot this case still would not present

issues of a magnitude worthy of this Court's grant of a Writ of Certiorari. The case does not present an issue of constitutional magnitude but rather, at most, presents only issues of remedial appropriateness which are controlled by the peculiar facts of this case. The plan which emerged from the first round of litigation in the District Court was found by this Court in the *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976), to be a court ordered plan wherein the standards of remedial appropriateness applied. The plan which emerged from the second round in the District Court (which generated the present petition) was even more clearly a court ordered plan. The Court of Appeals carefully applying *Wise v. Lipscomb*, 98 S.Ct. 2493 (1978), so held. The facts of this case are particularly clear because at the opening of the hearing in the District Court counsel for Plaintiffs, concerned with the possible applicability of Section 5, generated a colloquy with the Court and the District Attorney which resulted in a clear understanding that the governmental bodies has not adopted any plans but rather had only suggested to the Court plans appropriate as a remedy. If this were not the case clearly Section 5 of the Voting Rights Act of 1965 would apply and the plan disallowed by the Fifth Circuit would be disallowed for failure to obtain Section 5 clearance. Such a determination however, would place a cloud over the forthcoming election and add further confusion to the election process in East Carroll Parish which had long been complicated by this litigation.

Once it found that the standards of remedial appropriateness applied, the District Court turned its decision on the peculiar facts of this case.

The Court of Appeals also based its decision upon the independent alternative ground that the plan was based upon

voter registration rather than upon population. Thus, the plan violated a rule which by this time has become elementary in re-districting. In 1962, not a single black was registered to vote in East Carroll Parish. The registration rates of blacks still fall substantially below that of whites so that while the population of the parish is majority black its voter registration remains majority white. Basing the plan upon voter registration clearly tends to entrench the existing white majority and would be a continuation of past discrimination if allowed.

#### CONCLUSION

Because the issues for which Petitioners seek review herein are both stale and moot, and because the case below turned on non-constitutional issues of meager significance and since the Court of Appeals provided an alternative ground for its decision which is well settled in the law, Respondents urge that this Court deny the Petition for Writ of Certiorari herein.

Respectfully submitted,

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STANLEY A. HALPIN, JR.  
Attorney for Respondent

**CERTIFICATE**

I, Stanley A. Halpin, Jr., Attorney for Respondent and a member of the Bar of the United States Supreme Court, do hereby certify that on this 4th day of May, 1979, I served copies of the foregoing Response to Petition for Writ of Certiorari upon the attorney of record for Petitioners herein, Mr. George F. Fox, Jr., by mailing three copies of same, postage prepaid to him at his office at 301 Morgan Street, Lake Providence, Louisiana 71254.

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**STANLEY A. HALPIN, JR.**  
Counsel for Respondent